

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:23-CV-678-FL

KEITH L. FERGUSON and LATOYA)
BARNES,)
)
Plaintiffs,)
)
v.)
)
WESTGATE CJDR and TD BANK,)
)
Defendants.)

ORDER

This matter is before the court upon review of plaintiffs' complaints (DE 4-1 and DE 5-1) pursuant to 28 U.S.C. § 1915(e), and upon motion for temporary restraining order ("TRO") by plaintiff Keith L. Ferguson ("Ferguson") (DE 5-1). United States Magistrate Judge Brian S. Meyers entered memorandum and recommendation ("M&R"), pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), wherein it is recommended plaintiffs' claims be dismissed (DE 6), and that the motion for TRO be denied. Plaintiffs did not file objections to the M&R, and the time within which to make any objection has expired. In this posture, the issues raised are ripe for ruling.

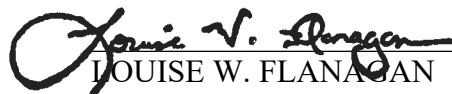
Upon a careful review of the M&R, the court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Because no objections have been filed, the court reviews the magistrate judge's findings and conclusions only for clear error, and need not give any explanation for adopting the M&R.

Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005); Camby v. Davis, 718 F.2d 198, 200 (4th Cir. 1983).

Here, the magistrate judge recommends dismissal without prejudice of claims on behalf of LaToya Barnes (“Barnes”) for failure to state a claim upon which relief can be granted, and because she has not brought claims on her own behalf. The magistrate judge also recommends dismissal of plaintiff Ferguson’s claims for failure to state a claim upon which relief can be granted, and recommends that the court dismiss Ferguson’s claim for commercial fraud without prejudice for lack of subject matter jurisdiction. In addition, the magistrate judge recommends denying plaintiff Ferguson’s TRO motion as without merit.

Upon careful review of the M&R, the court finds the magistrate judge’s analysis to be thorough, and there is no clear error. The court hereby ADOPTS the recommendation of the magistrate judge as its own, except as modified herein below. For the reasons stated therein, plaintiff Barnes’s claims are DISMISSED WITHOUT PREJUDICE. Plaintiff Ferguson’s claims, except for his commercial fraud claim, are DISMISSED for failure to state a claim upon which relief can be granted under 28 U.S.C. § 1915(e)(2)(B)(i) and (ii). Plaintiff Ferguson’s claim for commercial fraud is DISMISSED WITHOUT PREJUDICE for lack of subject matter jurisdiction, where the court declines to exercise supplemental jurisdiction over it. Finally, plaintiff Ferguson’s TRO motion (DE 5-1) is DENIED. The clerk of court is DIRECTED to close the case.

SO ORDERED, this the 31st day of July, 2024.


LOUISE W. FLANAGAN
United States District Judge